

Filed Oct. 27, 1969

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Civil Action No.

69 Civ. 200

Defendant's Request For Documents - Set I

Defendant, pursuant to Rule 34 of the Federal Rules of Civil Procedure requests plaintiff to produce within 30 days the following documents and to permit the defendant to inspect and copy such documents at places and times to be agreed upon by counsel.

Definitions and Construction

In interpreting each paragraph of this Schedule, the following definitions shall apply:

Competitor/Competition: Competitor and competition include past, present, future and potential competitors and competition.

Data Processing Product or Service: Data Processing Product or Service includes any such product or service and any group or grouping thereof and data processing products or services in general and includes any part, replacement part, component or supply thereof, therefore or related thereto.

Supplier of Any Data Processing Product or Service: Supplier of Any Data Processing Product or Service includes each person, including plaintiff, which supplied or supplies or potentially might supply by designing, developing, manufacturing, managing, marketing, leasing, selling, selling time on, or supervising

DOJ review(s) completed.

any product or service, and each officer, director, employee, agent or attorney of such supplier, whether acting within or without the scope of employment or agency.

In complying with this Schedule, each paragraph, subparagraph, clause and word herein should be construed independently and not by reference to any other paragraph, subparagraph, clause or word herein for purposes of limitation.

Further in complying with this Schedule, any requirement to produce documents which relate to any act, subject or thing includes but is not limited to a requirement to produce all documents which constitute, mention or which in any way, directly or indirectly, relate to any change in, reason for, effect (actual, intended or expected) of, or estimates, plans, projections or expectations regarding that act, subject or thing or the converse thereof.

Documents To Be Produced

All documents which constitute, mention, or which in any way, directly or indirectly, relate to:

1. Any supplier of any data processing product or service, including, but not limited to:

(a) any strength, weakness, origin, history, entry or exit (into or from the data processing business or any "market", "submarket" or "part" thereof), success, failure, position, employees, capital resource or requirement, asset, liability, research and development, patent (or patent application), growth or expansion of any such supplier;

(b) any expense, cost, profit, capital, revenue,

loss, depreciation, indebtedness, cash flow, allowance, reserve, or tax (by product or product group or by company, subsidiary, group, division or other profit center) of any such supplier;

(c) any barrier or deterrent (or the lack thereof) to the entry, exit, success, growth, expansion, revenue, or profits of any such supplier.

2. Any data processing product or service, including, but not limited to:

(a) any evaluation thereof;

(b) any comparison involving, or competition between, any such product or service and any other product or service;

(c) any purchase, sale, lease, bid, offer, proposal, consideration, termination or replacement thereof;

(d) the number, kind or variety thereof available;

(e) the number, kind or variety of persons performing or capable of performing any such service;

(f) any price, term, condition, proposal, negotiation, agreement or contract for any such product or service;

(g) the history, design, development, announcement, production (and production schedules), manufacture, marketing, availability, delivery (and delivery schedules), nature, complexity, technology, compatibility, obsolescence, capabilities, performance or specifications thereof;

(h) any change in or cancelation or withdrawal of it;

(i) any investment in it (whether by a supplier, customer or another);

(j) any advertising, statement, discussion, undertaking, assertion, representation, act or promise related thereto;

(k) any calculation, estimation or consideration of the life, life span or useful life thereof;

(l) any sales, lease or marketing figures, or plans, forecasts, projections or evaluations thereof.

3. Any customer, including plaintiff, of any data processing product or service with respect to:

(a) the organization, management, procurement, use, evaluation, selection, transfer or disposal of any data processing product or service, by such customer;

(b) the capacity or willingness, or lack thereof, of any such customer to purchase or lease any such product or service from any supplier or to itself make, perform or supply any such product or service thereof instead of or in addition to its existing or then existing supplier;

(c) the ability or capacity, or lack thereof, of any such customer to use, evaluate or select among, or to transfer or dispose of, any such product or service;

(d) any price, term, or condition for any data processing product or service offered, negotiated, considered, sought, accepted or rejected by any such customer.

4. The data processing business, any "market", "submarket" or "part" of commerce thereof, including, but not limited to:

- (a) the existence thereof;
- (b) the identity or nature of any product, service, supplier, purchaser or customer therein;
- (c) the nature, extent or effectiveness of competition therein;
- (d) the relative or absolute position of any company therein;
- (e) any power of any supplier of any data processing product or service therein;
- (f) any acquisition or maintenance or any attempt or intent to acquire or maintain power therein;
- (g) any possibility or probability that any supplier of any data processing product or service might or may injure or destroy competition therein or acquire or maintain any power therein;
- (h) any act, policy, practice, course of conduct, dealing or transaction which might accomplish or contribute to the injury or destruction of competition or the acquisition or maintenance of power therein.

5. Any offering or furnishing (or any refusal to offer or furnish) by any supplier, of any data processing product or service of any such product or service without charge or for a single charge which includes any other product or service or as a part of a package including any other product or service or any request or demand for such offering or furnishing by any customer.

6. Any pricing (or any refusal to price) by any supplier of any data processing product or service of any such product or service separately from any other data

processing product or service or any request or demand for such pricing by any customer.

7. Any announcement by any supplier relating to any data processing product or service, including, but not limited to:

(a) the time, timing or content of such announcement;

(b) any change in or, cancelation of any data processing product or service or any specification or capability thereof;

(c) the satisfaction or failure to satisfy any test or other standard;

(d) any extent to which such announcement was premature.

8. The percentage return (whether profit or loss) on investment or on revenue realized or anticipated by any supplier of any data processing product or service on any such product or service or the relationship any such return has or has not to any average or standard of comparison or to the return on any other data processing product or service.

9. Any giving or offering by any supplier of any data processing product or service of a price, product, service, term, condition, financing arrangement, or other consideration to any customer which is not offered or otherwise made available to all customers.

Cravath, Swaine & Moore,
One Chase Manhattan Plaza,
New York, N. Y. 10005

FREDERICK A. O. SCHWARTZ, JR.

by Frederick A. O. Schwartz, Jr.
A member of said firm,
Attorneys for Defendant

TO: Burton R. Thorman,
Attorney, Department of
Justice,
Attorney for Plaintiff.

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OPTIONAL FORM NO. 10

OCS 1573-71

9 NOV 1971

MEMORANDUM FOR: OCS Divisions and Staffs

SUBJECT: IBM Inquiry of Agency Personnel
Concerning Private Antitrust Cases

I call your attention to the attached memorandum to Mr. Helms from the Department of Justice and particularly to the last two paragraphs of that letter. Should questions which relate in any manner to current antitrust litigation be asked of you by IBM, I request you to advise IBM that such inquiries should properly be addressed to the Department of Justice. In such instance or should you be served with any court process concerning such litigation, please immediately notify [redacted] who will refer the matter to the Office of General Counsel.

JOHN D. IAMS
Director of Computer Services
DD/S&T

Attachment

cc: DDI/IPC C/IP Board
DDP/IPC ORD ADP Officer
DDS/IPC OSP ADP Officer

Distribution:

- 7 - 1 each div. & staff
- 3 - IPCs
- 2 - O/D/OCS
- 1 - OCS Registry

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OGC 71-1608

4 November 1971

MEMORANDUM FOR: Director of Computer Services

SUBJECT: Request from Department of Justice Re
IBM Inquiries to Agency Personnel
Concerning Private Antitrust Cases

1. Attached is a letter from the Assistant Attorney General, Antitrust Division, to the Director which is self-explanatory.
2. In order that we may comply with the Assistant Attorney General's request, would you advise appropriate personnel who might be contacted by IBM in these matters that they should not discuss them with IBM representatives and should advise you of the contact immediately. This information should also be passed, as you suggested, to CRS and RID. I have already informed the Office of Logistics. In case any such contacts are reported to you, will you please advise me so that I may discuss the matter with the Department of Justice.
3. In addition to the concern of the Assistant Attorney General, it is important that the Agency be able to take timely action to avoid or minimize any participation in these cases for security reasons.

STATINTL

Attachments

cc: ER

Assistant General Counsel

OGC:JDM:bg

Distribution:

Orig & 1 - Addressee

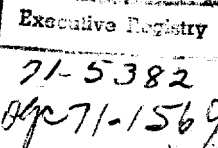
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1 - JDM Signer

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UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number
RWMcl:LB:BRT
60-235-38

OCT 22 1971

Mr. Richard Helms
Director
Central Intelligence Agency
Washington, D. C. 20505

Re: United States v. IBM

Dear Mr. Helms:

Reference is made to our prior correspondence regarding the captioned case in which you were requested to produce information sought by IBM pursuant to Court process.

In addition to this case, there are a number of private antitrust cases pending against IBM in which there are similar issues to those in the Government case. It has come to our attention that some Government personnel have been contacted by IBM counsel in those private cases and requested to discuss information relating to their governmental responsibilities. Because of the overlap among these cases, there is a likelihood that information furnished to such counsel in an interview or in writing may also be useful in the Government case.

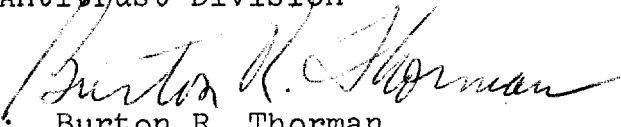
It is not our desire to deny to IBM or any of the other litigants information to which they may be legally entitled. It is essential, however, that the Department of Justice attorneys be aware of such requests and be in a position to protect the rights of the Government in this litigation.

Under the circumstances, it is our wish that any requests for interviews or documents received from IBM, its counsel, or from any other company, which refer to litigation with IBM, be promptly brought to the attention of this office. Similarly, the person making the request should be advised that, in view of the Government litigation, the request should be made to the Department of Justice. We would emphasize that this would not apply to normal commercial dealings between IBM or any other computer company and Government personnel.

In the event that an employee in your office is served with court process requiring his appearance for the taking of his deposition or in court in any of the IBM cases, this office should be notified promptly.

Sincerely yours,

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division


By: Burton R. Thorman
Assistant Chief
Special Litigation Section

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM					
UNCLASSIFIED		CONFIDENTIAL		SECRET	
OFFICIAL ROUTING SLIP					
TO	NAME AND ADDRESS		DATE	INITIALS	
1	The Director		28 OCT 1971	W	
2	Mr. Houston				
3					
4					
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6					
ACTION		DIRECT REPLY		PREPARE REPLY	
APPROVAL		DISPATCH		RECOMMENDATION	
COMMENT		FILE		RETURN	
CONCURRENCE		INFORMATION		SIGNATURE	
Remarks:					
OV CRS RIS					
FOLD HERE TO RETURN TO SENDER					
FROM: NAME, ADDRESS AND PHONE NO.				DATE	